

HOUSE BILL 2032  
By Sharp

AN ACT relative to fiscal affairs and to amend Tennessee Code  
Annotated, Titles 9, 13, 29, 56, 57, 67 and 71.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

**I. GOVERNMENTAL ACCOUNTABILITY.**

**SECTION 1.**

(a) Through enactment of this section, it is the intent of the general assembly to provide a mechanism to assist persons who are Medicaid eligible, as well as other persons who are unable to obtain health insurance coverage on a group basis under any plan, to purchase private market health insurance.

(b) Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section:

**§ 71-5-191.** The commissioner of health is authorized and directed to apply for a federal waiver pursuant to Section 1115 of Title XIX of the Social Security Act ("Medicaid Act"), 42 U.C.S. §1315, or any other applicable federal law, and, to the extent authorized by such federal waiver, to establish a program to include state-assisted purchase of private market health insurance with federal

financial participation for persons otherwise eligible for medical assistance under the federal Medicaid program, as well as for other persons having income below three hundred percent (300%) of poverty, who do not have access to health insurance coverage on a group basis. The program may also allow persons having income at or above three hundred percent (300%) of poverty, who do not have access to health insurance coverage on a group basis, to have access to and purchase the same insurance as is made available to persons who are eligible for subsidized insurance. To the extent authorized by such federal waiver, such program may replace or modify the TennCare Program.

(c) Tennessee Code Annotated, Section 71-5-102, is amended by deleting from the final sentence the words and punctuation "state plan." and by substituting instead the following:

state plan, including any federal waiver authorizing state-assisted purchase of private market health insurance with federal financial participation.

(d) Tennessee Code Annotated, Section 71-5-106(j), is amended by deleting the words and punctuation "state plan." and by substituting instead the following:

state plan, including any federal waiver authorizing state-assisted purchase of private market health insurance with federal financial participation.

**SECTION 2.** Tennessee Code Annotated, Title 13, is amended by adding the following language as a new, appropriately designated chapter:

**§ 13-5-101.**

(a) This part shall be known and may be cited as the "Tennessee Strategic Planning Act of 2001".

(b) The provisions of this part are a pilot project and shall apply only to the state agencies designated under the provisions of Section 13-5-103.

(c) This part is repealed on June 30, 2005.

**§ 13-5-102.**

(a) The general assembly finds and declares that:

(1) To promote intergovernmental coordination, accountability and the effective allocation of resources, the state should set goals to provide direction and guidance for state agencies in the development and implementation of their respective plans, programs, and services.

(2) Regular evaluation of the goals and state agency strategic plans is necessary to inform the public whether state goals are being attained. To accomplish this purpose, the state agency strategic plans should be evaluated annually with any necessary revisions prepared through coordinated action by state agencies and the state's chief planning officer.

(b) It is the intent of the general assembly that:

(1) The state planning process and the state agency strategic plans provide direction for the delivery of governmental services, a means for defining and achieving the specific goals of the respective state agencies, and a method for evaluating the accomplishment of those goals and establishing more accountability for all state agencies.

(2) State agency strategic plans shall be effectively coordinated to ensure the establishment of appropriate agency priorities and to facilitate the orderly, positive management of agency activities consistent with the public interest. It is also intended that the implementation of the state agency strategic plans enhances the quality of life of the citizens of the state.

**§ 13-5-103.** As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of finance and administration.

(2) "Goal" means the long-term end toward which programs and activities are ultimately directed.

(3) "Objective" means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.

(4) "Policy" means the way in which programs and activities are conducted to achieve an identified goal.

(5) "State agency" or "agency" means any one of the three (3) cabinet agencies within the executive branch of state government selected by the commissioner to participate in the pilot programs established under this act, and may include one higher education institution. For purposes of this subdivision, "higher education institution" means a four (4) year institution, community college, or non-formula unit selected by the commissioner in consultation with the executive director of the Tennessee higher education commission, the Tennessee board of regents and the University of Tennessee board of trustees.

(6) "State agency strategic plan" means the statement of priority directions that an agency will take to carry out its mission within the context of any statutory mandates and authorizations given to the agency.

(7) "Strategy" means a means to an end; a policy, program, action or decision that an agency uses to achieve an objective.

**§ 13-5-104.** The commissioner shall serve as the chief planning officer of the state and, in consultation with the governor, shall conduct an annual review and revision of the state agency strategic plans.

**§ 13-5-105.**

(a) The head of the state agency shall select from within such agency a person to be designated as the planning officer for such entity. The agency planning officer shall be responsible for coordinating with the commissioner of finance and administration and with the planning officers of other agencies all activities and responsibilities of such agency relating to planning.

(b) The head of the agency shall notify the commissioner of finance and administration in writing of the person initially designated as the planning officer for such agency and of any changes in persons so designated thereafter.

**§ 13-5-106.**

(a) A state agency strategic plan shall be a statement of the priority directions the agency will take to carry out its mission within the context of any statutory mandates and authorizations given to the agency. The agency strategic plan shall specify those objectives against which will be judged the agency's achievement of its goals.

(b) A state agency strategic plan shall be developed with a two (2) to five (5) year outlook and shall provide the strategic framework within which an agency's budget is developed.

(c) All amendments, revisions, or updates to a state agency strategic plan shall be prepared in the same manner as the original and shall be prepared as needed because of changes in the statutory authority and responsibility of the agency.

**§ 13-5-107.**

(a) Beginning in 2002, the head of the agency shall prepare a strategic plan and shall submit the plan to the commissioner at a time to be prescribed by the commissioner.

(b) The state agency strategic plan must be in a form and manner prescribed in written instructions prepared by the commissioner. The state agency strategic plan must identify any additional legislative authority necessary to implement the provisions of the plan. The agency may only implement those portions of its strategic plan that are consistent with statutory or constitutional authority and for which funding, if needed, is available consistent with the provisions of applicable appropriations acts of the general assembly. State agency strategic plans shall be amended by the agency, as necessary, to ensure consistency with the legislative actions prior to the effective date of the state agency strategic plan.

(c) The commissioner shall review the state agency strategic plan to ensure that it is consistent with the requirements as specified in the commissioner's written instructions. Within sixty (60) days, reviewed plans shall be returned to the agency, together with any required revisions.

(d) The head of each state agency shall, within thirty (30) days of the return of its state agency strategic plan, incorporate all revisions required by the commissioner and return the revised plan to the commissioner.

(e) The commissioner shall transmit copies of each state agency strategic plan to the speaker of the senate and the speaker of the house of representatives for referral to the respective finance, ways and means committees and other appropriate standing committees, not later than thirty (30) days prior to the next regular session of the general assembly.

(f) Notwithstanding the provisions of any law to the contrary, the state agency strategic plans developed pursuant to this part are not rules and, therefore, are not subject to the provisions of the Uniform Administrative Procedures Act, Title 4, Chapter 5.

**SECTION 3.** Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the following language as a new, appropriately designated part:

**§ 9-4-5001.**

(a) This part shall be known and may be cited as the "Tennessee Performance-Based Budgeting Act of 2001".

(b) The provisions of this part are a pilot project and shall apply only to the state agencies designated under the provisions of Section 9-4-5003.

(c) The provisions of this part are repealed on June 30, 2005; provided, however, that the performance measure and standard adoption provisions of Section 9-4-5004(c), the performance standard adjustment provisions of Section 9-4-5004(d), the performance reporting provisions of Section 9-4-5007, and the audit provisions of Section 9-4-5008 shall apply only to the 2003-2004 fiscal year; and that other provisions of this part shall apply only to the 2003-2004 and 2004-2005 fiscal years.

**§ 9-4-5002.** In addition to the items to be set forth in the budget document pursuant to Section 9-4-5101, the governor shall also provide to the general assembly a performance-based program budget for programs administered by each state agency as defined in Section 9-4-5003.

**9-4-5003.** As used in this act, unless the context otherwise requires:

(1) "Baseline data" means indicators of a state agency's current performance level, pursuant to guidelines established by the commissioner.

(2) "Commissioner" means the commissioner of finance and administration.

(3) "Fiscal year" shall have the meaning set forth in Section 9-1-101.

(4) "Goal" means the long-term end toward which programs and activities are ultimately directed.

(5) "Objective" means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.

(6) "Outcome" means an indicator of the actual impact or public benefit of a program.

(7) "Output" means the amount of actual service or product delivered by a state agency.

(8) "Performance-based program budget" means a budget that incorporates program performance measures.

(9) "Performance ledger" means the official compilation of information about state agency performance-based programs and measures, including approved programs, approved outputs and outcomes, baseline data, approved standards for each performance measure and any approved adjustments thereto, as well as actual agency performance for each measure.

(10) "Performance measure" means a quantitative or qualitative indicator used to assess state agency performance.

(11) "Policy" means the way in which programs and activities are conducted to achieve an identified goal.

(12) "Program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives.

(13) "Standard" means a quantitative performance level or target that a program is expected to achieve for an outcome or output.

(14) "State agency" or "agency" means any one of the three (3) cabinet agencies within the executive branch of state government selected by the commissioner to participate in the pilot programs established under this act, and may include one higher education institution. For purposes of this subdivision, "higher education institution" means a four (4) year institution, community



college, or non-formula unit selected by the commissioner in consultation with the executive director of the Tennessee higher education commission, the Tennessee board of regents and the University of Tennessee board of trustees.

(15) "State agency strategic plan" means the plan developed and approved pursuant to Title 13, Chapter 5, Part 1.

**§ 9-4-5004.**

(a) By October 1, 2002, and October 1, 2003, the head of each state agency shall identify and submit to the commissioner a list of proposed state agency programs and performance measures for the next fiscal year. Performance measures proposed by the agency must be consistent with the objectives in the state agency strategic plan prepared in accordance with Title 13, Chapter 5, Part 1, and shall represent one-year implementation efforts necessary to meet the state agency strategic plan objectives.

(b) The following documentation shall accompany the list of proposed programs and measures submitted by the state agency:

(1) The constitutional or statutory direction and authority for each program;

(2) Identification of the customers, clients, and users of each program;

(3) The purpose of each program or the benefit derived by the customers, clients, and users of the program;

(4) Costs of each program;

(5) An assessment of whether each program is conducive to performance-based program budgeting;

(6) An assessment of the time needed to develop meaningful performance measures for each program;

(7) A comparison of the agency's existing budget program structure to the proposed budget program structure. No change to the budget program structure, as reflected in the work program allotments approved pursuant to Title 9, Chapter 4, Part 51, shall be submitted or made without the advance approval of the commissioner;

(8) A description of the use of performance measures in agency decision-making, agency actions to allocate funds and manage programs, and the agency strategic plan; and

(9) The outputs produced by each proposed program, the outcomes resulting from each proposed program, and baseline data associated with each performance measure. Agencies must submit documentation for each output and outcome measure, which explains the validity, reliability, and appropriateness of each performance measure.

(c) The performance-based program budget request submitted by the agency pursuant to Section 9-4-5005 shall contain the programs and performance measures adopted by the general assembly, or, if none are adopted, those approved by the commissioner. Notwithstanding the programs, performance measures, and standards recommended for each state agency in the governor's budget recommendations, the general assembly shall have final approval of all programs, performance measures, and standards through the general appropriations act.

(d) Annually, no later than forty-five (45) days after the general appropriations act becomes law, the head of the state agency may submit to the commissioner any adjustments to program performance standards based on the amounts appropriated for each program by the general assembly. When such adjustment is made, all performance standards, including any adjustments made,

shall be submitted to and reviewed and revised as necessary by the commissioner and, upon approval, shall be submitted by the commissioner to the chairs of the finance, ways and means committees of the senate and house of representatives. The commissioner shall maintain both the official record of adjustments to the performance standards as part of the agency's approved operating budget and the official performance ledger.

**§ 9-4-5005.**

(a) The head of the state agency shall prepare a performance-based budget request for the 2003-2004 and 2004-2005 fiscal years on blanks furnished by the commissioner and shall submit the budget request to the commissioner by dates in 2002 and 2003 to be prescribed by the commissioner.

(b) An agency's expenditure estimate as required by Section 9-4-5103 shall identify the financial resources necessary to further the provisions of the agency strategic plan prepared in accordance with Title 13, Chapter 5, Part 1.

**§ 9-4-5006.**

(a) The commissioner shall develop performance-based program budget request instructions from which the agency shall prepare its performance-based program budget request, which shall be submitted to the commissioner in accordance with Section 9-4-5005. The budget instructions must include instructions for agencies in submitting performance measures and standards as required by Section 9-4-5004. The budget instructions must also include instructions for agencies in submitting the assessment of performance measures required to be included in the agency annual performance report under Section 9-4-5007.

(b) The commissioner shall review the performance-based program budget request for compliance with budget instructions. The commissioner may

adjust the program budget request of the agency in preparing the recommended budget for review by the governor. Nothing in this part shall limit the authority of the governor to revise the budget estimates, appropriation recommendations, work program allotments, or performance measure recommendations of any agency or program pursuant to the governor's authority under Title 9, Chapter 4, Part 51, or other law.

**§ 9-4-5007.**

(a) On or before December 1, 2004, the head of the state agency shall submit an annual performance report for the preceding fiscal year to and in a form prescribed by the commissioner. The commissioner shall transmit copies of the agency annual reports to the speakers of the senate and house of representatives for referral to and consideration by the respective finance, ways and means committees and other appropriate standing committees. Copies shall also be provided by the commissioner to the fiscal review committee, the comptroller of the treasury and the office of legislative budget analysis. The purpose of this report is to evaluate the attainment of the agency objectives identified in the state agency strategic plan, developed pursuant to Title 13, Chapter 5, Part 1, and the performance measures adopted or approved pursuant to Section 9-4-5004 for the previous fiscal year.

(b) The commissioner shall review the agency annual performance report required by subsection (a) and may require any additional reports or analyses as necessary.

(c) Whenever the governor, in consultation with the commissioner, determines that an emergency or other urgent practical necessity requires that the strategic planning process provided in this part be suspended, the governor may suspend such planning process for a period of one year, provided that the

governor gives notice in writing to the chairs of the senate and house finance, ways and means committees at least thirty (30) days prior to such suspension. The written notice shall include a statement of the nature of the emergency or urgent practical necessity.

**§ 9-4-5008.** On an annual basis, the comptroller of the treasury shall audit the information used or created by a state agency to prepare the annual performance report required by Section 9-4-5007(a), together with any books, records and other evidences of financial transactions kept by the state agency subject to this act. The comptroller of the treasury shall have the full cooperation of the officials of any such state agency in the performance of such audit or audits. Every such audit shall be performed and reported as a part of and in accordance with the provisions contained in Title 8, Chapter 4.

#### **SECTION 4.**

(a) Tennessee Code Annotated, Section 9-4-5106(a)(2), is amended by inserting after the language "or which may be required by the general assembly" the language "including, but not limited to, any information and statements necessary to implement the provisions of Title 9, Chapter 4, Part 50".

(b) This section is repealed on June 30, 2005.

(c) Sections 2, 3 and 4 of this act shall be null and void unless appropriations, necessary to implement such sections, are made in each general appropriations act for fiscal years 2001-2002, 2002-2003, 2003-2004, and 2004-2005.

### **II. TAX REFORM.**

**SECTION 5.** The general assembly finds and declares that public education in Tennessee, beginning with pre-school and continuing through the post-secondary level, must be funded adequately through a system of revenue that is fair, equitable, and responsible, in order to provide the citizens of this state the opportunity to compete for jobs in the twenty-first century,

to enjoy the quality of life to which they aspire, and to provide the foundation for a prosperous and diversified economy. The general assembly further finds and declares that the ability of local governments to finance needs without over-reliance on the property tax should be enhanced. It is the purpose of this act to make these goals a reality in Tennessee and to establish a reliable and stable base of revenue for other vital governmental functions.

**SECTION 6.** Tennessee Code Annotated, Title 67, Chapter 6, Part 3 is amended by adding the following language as a new, appropriately designated section:

**§ 67-6-385.**

(a)

(1) Except as provided in subdivision (2), the sale of food and food ingredients for human consumption shall be exempt from the tax levied by this chapter.

(2) The following food and food ingredients shall remain subject to the tax levied by this chapter:

(A) Candy;

(B) Dietary supplements; and

(C) Prepared food.

(3) For purposes of this section:

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one (1) or more of the following dietary ingredients:

(a) a vitamin;

(b) a mineral;

(c) an herb or other botanical;

(d) an amino acid;

(e) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) a concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. §101.36.

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

"Prepared food" does not include:

(a) food that is only sliced, repackaged, or pasteurized by the seller; or

(b) soft drinks.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not include:

(1) "Alcoholic beverages" which means beverages that are suitable for human consumption and contain one-half (1/2) of one (1) per cent or more of alcohol by volume; or

(2) "Tobacco" which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

**SECTION 7.** Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following language as a new, appropriately designated section:

**§ 67-6-386.**

(a)

(1) The sale of clothing and protective equipment shall be exempt from the tax levied by this chapter.

(2) The sale of clothing accessories or equipment and sport or recreational equipment shall remain subject to the tax levied by this chapter:



(b) For purposes of this section, "clothing" shall mean all human wearing apparel suitable for human use including, but not limited to:

- (1) Aprons, household and shop;
- (2) Athletic supporters;
- (3) Baby receiving blankets;
- (4) Bathing suits and caps;
- (5) Beach capes and coats;
- (6) Belts and suspenders;
- (7) Boots;
- (8) Coats and jackets;
- (9) Costumes;
- (10) Diapers (children and adults - including disposables);
- (11) Ear muffs;
- (12) Footlets;
- (13) Formal wear;
- (14) Garters and garter belts;
- (15) Girdles;
- (16) Gloves and mittens for general use;
- (17) Hats and caps;
- (18) Hosiery;
- (19) Insoles for shoes;
- (20) Lab coats;
- (21) Neckties;
- (22) Overshoes;
- (23) Pantyhose;
- (24) Rainwear;

- (25) Rubber pants;
- (26) Sandals;
- (27) Scarves;
- (28) Shoes and shoe laces;
- (29) Slippers;
- (30) Sneakers;
- (31) Socks and stockings;
- (32) Steel-toed shoes;
- (33) Underwear;
- (34) Uniforms, athletic and non-athletic; and
- (35) Wedding apparel.

(c) For purposes of this section, clothing shall not include:

- (1) Belt buckles sold separately;
- (2) Costume masks sold separately;
- (3) Patches and emblems sold separately;
- (4) Sewing equipment and supplies (knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, thimbles); or
- (5) Sewing materials that become part of clothing (buttons, fabric, lace, thread, yarn, zippers).

(d) For purposes of this section, the following definitions are mutually exclusive of clothing and each other:

(1) "Clothing accessories or equipment" shall mean incidental items worn on the person or in conjunction with clothing. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Clothing accessories shall include:

- (A) Briefcases;
- (B) Cosmetics;
- (C) Hair notions, including barrettes, hair bows, hair nets,  
etc.;
- (D) Handbags;
- (E) Handkerchiefs;
- (F) Jewelry;
- (G) Sun glasses, non-prescription;
- (H) Umbrellas;
- (I) Wallets;
- (J) Watches; and
- (K) Wigs and hair pieces.

(2) "Sport or recreational equipment" shall mean items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Sport or recreational equipment shall include:

- (A) Ballet and tap shoes;
- (B) Cleated or spiked athletic shoes;
- (C) Gloves (baseball, bowling, boxing, hockey, golf, etc.);
- (D) Goggles;
- (E) Hand and elbow guards;
- (F) Life preservers and vests;
- (G) Mouth guards;
- (H) Roller and ice skates;
- (I) Shin guards;

- (J) Shoulder pads;
- (K) Ski boots;
- (L) Waders; and
- (M) Wetsuits and fins.

(3) "Protective equipment" shall mean items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. The following list is intended to be a list of examples and not an all inclusive list of possibilities. Protective equipment shall include:

- (A) Breathing masks;
- (B) Clean room apparel and equipment;
- (C) Ear and hearing protectors;
- (D) Face shields;
- (E) Finger guards;
- (F) Hard hats;
- (G) Helmets;
- (H) Paint or dust respirators;
- (I) Protective gloves;
- (J) Safety glasses and goggles;
- (K) Safety belts;
- (L) Tool belts; and
- (M) Welders gloves and masks.

**SECTION 8.** Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following language as a new, appropriately designated section:

**§ 67-6-387.**

(a)

(1) The sale of non-prescription drugs shall be exempt from the tax levied by this chapter.

(2) The sale of dietary supplements, as defined in § 67-6-385(a)(3)(B), shall remain subject to the tax levied by this chapter.

(b) For purposes of this section, "non-prescription drugs" shall mean non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged and labeled for use in accordance with the United States food, drug and cosmetic act and the laws of Tennessee, other than drugs as defined in Section 53-10-101. "Non-prescription drugs" does not include dietary aids, supplements, natural or herbal remedies, or health foods, notwithstanding any claim to medicinal value that such aids, supplements, remedies or foods may make.

**SECTION 9.** Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the language "six percent (6%)" and by substituting instead the language "seven percent (7%)".

**SECTION 10.** Tennessee Code Annotated, Section 67-6-202, is amended by deleting subsection (b) and by substituting instead the following:

(b) Notwithstanding any provision of law to the contrary, after the effective date of Section 9, any proposed increase in the tax rate established by Section 9 must be approved by a two-thirds (2/3) vote of the senate and a two-thirds (2/3) vote of the house of representatives.

**SECTION 11.** Tennessee Code Annotated, Section 67-6-203(a), is amended by deleting the language "six percent (6%)" and by substituting instead the language "seven percent (7%)".

**SECTION 12.** Tennessee Code Annotated, Section 67-6-203, is amended by deleting subsection (c) and by substituting instead the following:

(c) Notwithstanding any provision of law to the contrary, after the effective date of Section 11, any proposed increase in the tax rate established by Section 11 must be approved by a two-thirds (2/3) vote of the senate and a two-thirds (2/3) vote of the house of representatives.

**SECTION 13.** Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears and by substituting instead the language "seven percent (7%)".

**SECTION 14.** Tennessee Code Annotated, Section 67-6-204, is amended by deleting subsection (d) and by substituting instead the following:

(d) Notwithstanding any provision of law to the contrary, after the effective date of Section 13, any proposed increase in the tax rate established by Section 13 must be approved by a two-thirds (2/3) vote of the senate and a two-thirds (2/3) vote of the house of representatives.

**SECTION 15.** Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the language "six percent (6%)" and by substituting instead the language "seven percent (7%)".

**SECTION 16.** Tennessee Code Annotated, Section 67-6-205, is amended by deleting subsection (b) and by substituting instead the following:

(b) Notwithstanding any provision of law to the contrary, after the effective date of Section 15, any proposed increase in the tax rate established by Section 15 must be approved by a two-thirds (2/3) vote of the senate and a two-thirds (2/3) vote of the house of representatives.

**SECTION 17.** Tennessee Code Annotated, Section 67-6-221, is amended by deleting the first sentence of subsection (b).

**SECTION 18.** Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (a) and by substituting instead the following:

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Sixty-five and ninety-seven thousandths percent (65.0970%) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes;

(2) Subject to the limitations in the formula provided in items (A) through (C), a sum shall be earmarked and allocated from the general fund to hold municipalities harmless from any loss of revenue resulting from the amendments to Title 67, Chapter 6, Part 2 provided in this act:

(A) The aggregate amount distributed to municipalities under Section 67-6-103 in the fiscal year ending June 30, 2002 shall constitute the "aggregate base amount local share."

(B) The aggregate base amount local share shall be adjusted annually by the percentage rate of growth of tax collections under this chapter.

(C) The aggregate base amount local share as adjusted under item (B) shall be distributed to municipalities pro rata by population determined according to the most recent federal decennial census or any interim local census as provided in items (E) and (F) .

(D)

(i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1970 or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist courts

accommodation, tourist shops and restaurants, is defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(2)(A), (B) and (C), a premiere type tourist resort may elect to receive six and forty-eight thousandths percent (6.0480%) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount which would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(2)(D)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(2)(D)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(2)(D)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(2)(D)(i);



(iv)

(a) A municipality meeting the criteria set forth in subdivision (a)(2)(D)(ii) shall also receive in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(2)(D)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(b) A municipality meeting the criteria set forth in subdivision (a)(2)(D)(iii) shall also receive, in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(2)(D)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(v) The collective amounts paid under subdivisions (a)(2)(D)(i) through (a)(2)(D)(iv) shall be limited to the collective amounts paid under Section 67-6-103(a)(3)(B)(i) through Section 67-6-103(a)(3)(B)(iv) for the 1999-2000 fiscal year;

(E) Any municipality shall have the right to take not more than one special census at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the

census, or in a manner directed by and satisfactory to the comptroller.

The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the comptroller to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned;

(F) Any other such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section;

(G) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the amount allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to

municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(3) Thirty-six hundred seventy-four ten-thousandths percent (0.3674%), or so much thereof as may be required, shall be earmarked and allocated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter;

(4) Ninety-one hundred eighty-five ten-thousandths percent (0.9185%) shall be earmarked and allocated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee; and

(5) The remainder of such moneys shall be earmarked and allocated to the general fund.

**SECTION 19.** Tennessee Code Annotated, Section 67-6-103(c), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) Notwithstanding any provision of this act or any other law to the contrary, the portion of the sales and use tax revenue dedicated to education, grades k-12, pursuant to the provisions of chapter 529 of the public acts of 1992 and Section 67-6-224(b), shall continue to be earmarked for such purposes as provided in Section 49-3-357 and deposited in the education trust fund of 1992.

**SECTION 20.** Tennessee Code Annotated, Title 67, Chapter 6, is amended by deleting Part 7 in its entirety and by substituting instead the following:

**§ 67-6-701.** Subject to the limitations in the formula provided in Section 67-6-702, a sum shall be earmarked and allocated from the general fund to hold counties and

municipalities harmless from actual or potential loss of revenue resulting from the amendments to Title 67, Chapter 6, Part 7 provided in this act.

**§ 67-6-702.**

(a)

(1) The aggregate amount collected by all counties and municipalities under Title 67, Chapter 6, Part 7 in the fiscal year ending June 30, 2002 times a factor of 1.04 shall constitute the "aggregate local option sales tax base amount."

(2)

(A) The individual amount collected by each county or municipality under Title 67, Chapter 6, Part 7 in the fiscal year ending June 30, 2002 times a factor of 1.04 shall constitute the "individual local government local option sales tax base amount" for that county or municipality.

(B) The individual local government local option sales tax base amount for any county or municipality that did not collect any amounts under Title 67, Chapter 6, Part 7 in the fiscal year ending June 30, 2002, shall be zero (0).

(b) In the month beginning February 1, 2003, and continuing monthly thereafter, the commissioner shall distribute to each county and municipality from the general fund an amount equal to one-twelfth (1/12) of its individual local option sales tax base amount.

(c) The aggregate local option sales tax base amount shall be adjusted beginning July 1, 2003 by the average of the percentage rate of growth of tax collections under Title 67, Chapter 6, Part 2, and the annualized percentage rate of growth of tax collections under Title 67, Chapter 2, Part 2. The base year for

purposes of determining the percentage rate of growth in future years shall be the fiscal year ending June 30, 2003.

(d)

(1) An amount equal to fifteen percent (15%) of the percentage annual growth in the aggregate local option sales tax base amount shall be distributed in the fiscal year beginning July 1, 2003, and each year thereafter, to each county and municipality pro rata by sales tax collections from such city or county relative to total state sales tax collections.

(2) The remainder of the percentage annual aggregate growth in the aggregate local option sales tax base shall be distributed in the fiscal year beginning July 1, 2003, and each year thereafter, to each county and municipality pro rata by population determined according to the most recent federal decennial census or any interim local census as provided in items (E) and (F) of Section 67-6-103(a)(2), without regard to whether such county or municipality has collected any amounts under Title 67, Chapter 6, Part 7, prior to the effective date of this act. For purposes of this part, in determining the population of each county, the population of each municipality receiving distributions under this part within each county shall be deducted from such county's population. Insofar as practicable, the commissioner shall distribute such amounts on a monthly basis.

**§ 67-6-703.** One-half (1/2) of the proceeds distributed to counties and municipalities under this part shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed.

**§ 67-6-704.** A county and municipality may, by contract, provide for an alternative distribution for the amount not distributed under Section 67-6-703. It is the legislative intent that this act shall not alter the economic effect of any such agreements in effect as of the effective date of this section.

**SECTION 21.** Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the language "six and one-half (6 1/2) mills" and by substituting instead the language "eight and one-half (8 ½) mills".

**SECTION 22.** Tennessee Code Annotated, Section 67-4-1005, is amended by deleting the language " six percent (6%) of the wholesale cost price" and by substituting instead the language "seven and four-tenths percent (7.4%) of the wholesale cost price".

**SECTION 23.** Tennessee Code Annotated, Section 57-3-302(a), is amended by deleting the language "one dollar and ten cents (\$1.10) on each gallon of wine" and by substituting instead the language "one dollar and nineteen cents (\$1.19) on each gallon of wine".

**SECTION 24.** Tennessee Code Annotated, Section 57-3-302(b), is amended by deleting the language "four dollars (\$4.00) on each gallon of spirits" and by substituting instead the language "four dollars and thirty-two cents (\$4.32) on each gallon of spirits".

**SECTION 25.** Tennessee Code Annotated, Section 57-5-201(a), is amended by deleting from the language "in an amount equal to three dollars and ninety cents (\$3.90) per barrel" and by substituting instead the language "in an amount equal to four dollars and fifty-six cents (\$4.56) per barrel".

**SECTION 26.** Tennessee Code Annotated, Title 67, Chapter 4, is amended by deleting Part 17.

**SECTION 27.**

(a) Tennessee Code Annotated, Section 67-2-102, is amended by deleting the language "six percent (6%) per annum" and by substituting instead the language "two and one-fourth percent (2.25%) per annum".

(b) Tennessee Code Annotated, Section 67-2-103, is amended by deleting the section and by substituting instead the following:

**§ 67-2-103.** The tax imposed by this part is levied, collected and distributed on behalf and for the benefit of the various counties and municipalities of the state; and no county or municipality is authorized to levy, alter or collect the tax. The tax imposed by this part is a local tax and, as such, is levied in addition to the tax imposed by Section 28.

(c) Tennessee Code Annotated, Section 67-2-119, is amended by deleting the section and by substituting instead the following:

**§ 67-2-119.**

(a) Except as otherwise provided in Sections 67-2-117 and 67-2-118, the taxes collected under the provisions of this part shall be distributed among the cities and counties of the state in accordance with the provisions of subsections (b) through (d).

(b) If a taxpayer resides within the corporate limits of any municipality and if such taxpayer pays tax imposed under the provisions of this part, then such tax shall be returned to the municipality within which such taxpayer resides.

(c) If a taxpayer resides within a county, but without the corporate limits of any municipality, and if such taxpayer pays tax imposed under the provisions of this part, then such tax shall be returned to the county within which such taxpayer resides.

(d) In each instance, the payment to municipalities and counties covering tax collections made hereunder during any fiscal year shall be made on or before July 31, immediately following the close of such fiscal year.

**SECTION 28.** Tennessee Code Annotated, Title 67, Chapter 2, is amended by adding the following language as a new, appropriately designated part:

**§ 67-2-201.** The title of this part is, and may be cited as, “The Tennessee Flat Tax Law.”

**§ 67-2-202.**

(a) As used in this part, unless the context otherwise requires:

(1) “Commissioner” means the commissioner of revenue or the commissioner’s designee.

(2) “Department” means the department of revenue.

(3) “Estimated tax” means the amount that the taxpayer estimates to be the taxpayer’s income tax under this part for the taxable year less the amount which the taxpayer estimates to be the sum of any credits allowable for tax withheld.

(4) “Individual” means a natural person.

(5) “Internal Revenue Code” means Title 26 of the United States Code as effective during the year in which the tax under this part is determined.

(6) “Nonresident individual” means any natural person who is not a resident of this state for any portion of the taxable year.

(7) “Nonresident trust or estate” means any trust or estate other than a resident trust or estate or a part-year resident trust.

(8) “Partner” means a partner as defined in Section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as



from time to time amended. With respect to any reference in this part, or in rules adopted under this part, to pass-through entities, “partner” shall include a member of a limited liability company that is treated as a partnership for federal income tax purposes, and includes any person who owns, directly or indirectly through one or more pass-through entities, an interest in another pass-through entity.

(9) “Partnership” means a partnership as defined in Section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended, and any reference in this part, or in rules adopted under this part, to a partnership shall include a limited liability company that is treated as a partnership for federal income tax purposes.

(10) “Part-year resident individual” means any natural person who is not either a resident of this state for the entire taxable year or a nonresident of this state for the entire taxable year.

(11) “Part-year resident trust” means any trust that is not either a resident trust or a nonresident trust for the entire taxable year.

(12) “Pass-through entity” means any partnership of any kind whatsoever, any limited liability company or other entity treated as a partnership for purposes of federal income taxation, and any S corporation.

(13) “Person” means any natural person, association, corporation, partnership, limited liability company, trust, estate, and any other entity of any kind whatsoever.

(14) “Resident individual” means any natural person who is domiciled in this state at any time during the taxable year or who resides

in this state during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual other than a member of the armed forces of the United States, who is present in this state for more than one hundred eighty-three (183) days during the taxable year, is presumed to be a resident, but the absence of an individual from this state for more than one hundred eighty-three (183) days raises no presumption that the individual is not a resident. A resident who removes from the state during a taxable year is considered a resident until he or she has both established a definite domicile elsewhere and abandoned any domicile in this state.

(15) "Resident trust or estate" means:

(A) The estate of a decedent who at the time of death was a resident of this state;

(B) The estate of a person who, at the time of commencement of a case under Title 11 of the United States Code, was a resident of this state;

(C) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of death was a resident of this state; and

(D) A trust, or a portion of a trust, consisting of the property of:

(i) A person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable;

(ii) A person who, if the trust was revocable at the time the property was transferred to the trust, and has not

subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust; or

(iii) A person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a resident of this state at the time the trust became irrevocable.

(16) "S corporation" means any corporation that is an S corporation for federal income tax purposes.

(17) "Taxable year" means the year defined in Section 67-2-205.

(18) "Taxpayer" means any person, trust or estate subject to the tax levied by this part, including any pass-through entity referenced in Section 67-2-215.

(19) "Trust" means an arrangement that is ordinarily created either by a will or by an inter vivos declaration whereby a trustee or trustees take title to property for the purpose of protecting or conserving it for beneficiaries and that, under 26 C.F.R. § 301.7701-4, is classified and treated as a trust (and not as an association, under 26 C.F.R. § 301.7701-2, or partnership, under 26 C.F.R. § 301.7701-3) for federal income tax purposes. "Trust" does not include any real estate mortgage investment conduit, as defined in section 860D of the Internal Revenue Code, that is created as a trust, or any other entity described in section 67-4-2008(a)(9).

(b) Any term used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is provided or clearly required.

**§ 67-2-203.**

(a) The tax levied by this part is declared to be a tax on one or more of the following:

- (1) The privileges of engaging in a business, profession, occupation, trade, employment, enterprise, or endeavor; of investing or depositing money or capital; of selling one's labor or property; of engaging in a lease or rental; of benefiting from a pension, trust, annuity, or similar account; of receiving income or earnings; of applying one's talents, skills, time, efforts, resources, or property for personal gain or advantage; or of enjoying the protections and benefits provided by government;
- (2) Income as a species of intangible personal property; or
- (3) Income:

Provided, however, if any of the categories or subcategories contained in this subsection are determined by a court of competent jurisdiction to be beyond the authority of the general assembly to levy taxes on such categories or subcategories, then the tax levied by this part shall not be deemed to be a tax on the categories or subcategories determined to be invalid.

(b) It is an offense to engage in any of the privileges enumerated in subsection (a)(1) that produce income that is used to measure the tax levied by this part without paying the tax in accordance with the provisions of this part.

(c) The tax levied by this part is for state purposes only, and no county or municipality shall have power to levy any like tax.

(d) Notwithstanding any provision of law to the contrary, after the effective date of this section, any proposed increase in the tax rate established by § 67-2-204(a)(1), must be approved by a two-thirds (2/3) vote of the senate and a two-thirds (2/3) vote of the house of representatives.

**§ 67-2-204.**

(a)

(1) Except as provided in subdivisions (2) and (3), for tax years beginning on or after January 1, 2003, there is hereby levied on each resident single individual, resident married individual filing separately, resident husband and wife filing jointly, resident estate, and resident trust, a tax of two and one-half percent (2 1/2%) per annum of Tennessee adjusted gross income.

(2) The return filing and withholding requirements of this part shall not apply, and no tax shall be levied, on any resident single individual, resident married individual filing separately, resident single head of household, resident husband and wife filing jointly, resident estate, or resident trust that is not required by federal law, by reason of the amount of its federal adjusted gross income, to file a federal tax return.

(3) The return filing and withholding requirements of this part shall not apply, and no tax shall be levied, unless the taxpayer's Tennessee adjusted gross income exceeds the threshold of one hundred percent (100%) of federal poverty guidelines as promulgated by the U. S. Department of Health and Human Services, or its successor agency, for a family unit consisting of the taxpayer and the taxpayer's dependents.

(b) There is hereby levied on each nonresident individual of this state a tax equal to the product of an amount equal to the tax computed as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state and the denominator of which is the nonresident's Tennessee adjusted gross income; provided, if the nonresident's Tennessee

adjusted gross income is less than the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state, then the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state shall be applied to the rate specified in subsection (a) for the purposes of determining the tax pursuant to this section. The provisions of this subsection shall also apply to nonresident trusts and estates, and wherever reference is made in this subsection to nonresidents of this state, such reference shall be construed to include nonresident trusts and estates; provided any reference to a nonresident's Tennessee adjusted gross income derived from sources within this state or to a nonresident's Tennessee adjusted gross income shall be construed, in the case of a nonresident trust or estate, to mean the nonresident trust or estate's Tennessee adjusted gross income derived from sources within this state and the nonresident trust or estate's Tennessee adjusted gross income, respectively.

(c) There is hereby levied on the Tennessee adjusted gross income of each part-year resident individual, derived from or connected with sources within this state, a tax which shall be a product equal to the tax computed as if such part-year resident were a resident, multiplied by a fraction, the numerator of which is the part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, as described in Section 67-2-209, and the denominator of which is the part-year resident's Tennessee adjusted gross income; provided, if the part-year resident's Tennessee adjusted gross income is less than such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, then such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state shall be applied to the rate specified in subsection (a) for

purposes of determining the tax pursuant to this section. The provisions of this subsection shall apply to part-year resident trusts, and wherever reference is made in this subsection to part-year residents, such reference shall be construed to include part-year resident trusts; provided, any reference to a part-year resident's Tennessee adjusted gross income derived from sources within this state or a part-year resident's Tennessee adjusted gross income shall be construed, in the case of a part-year resident trust, to mean the part-year resident trust's Tennessee adjusted gross income derived from sources within this state and the part-year resident trust's Tennessee adjusted gross income, respectively.

(d) Any person exempt from federal income tax by reason of its purposes or activities shall be exempt from tax levied by this part, but such person is not exempt from the reporting and withholding requirements imposed by this part.

**§ 67-2-205.**

(a) For purposes of the tax levied by this part, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes, and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, Tennessee adjusted gross income shall be computed under such method that in the opinion of the commissioner fairly reflects income.

(b) If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of the tax under this part shall be similarly changed. If a taxpayer's method of accounting is changed for federal income tax purposes, the method of accounting for purposes of this part shall similarly be changed.

(c) In computing a taxpayer's Tennessee adjusted gross income for any taxable year under a method of accounting different from the method under which the taxpayer's Tennessee adjusted gross income for the previous year was computed, there shall be taken into account those adjustments that are determined, under rules adopted by the commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(d) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax that results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two (2) years, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year that is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

**§ 67-2-206.**

(a) For purposes of this part, "Tennessee adjusted gross income" of a natural person (resident, nonresident, and part-year resident individual) is defined as the person's federal adjusted gross income, adjusted as provided in this section. Except as provided in Section 67-2-229, filing status must be the same as the federal income tax filing status for the same taxable year.

(b) There shall be added to federal adjusted gross income the following amounts:



(1) To the extent not properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(2) To the extent included in gross income for federal income tax purposes for the taxable year, the total taxable amount of a lump sum distribution for the taxable year deductible from such gross income in calculating federal adjusted gross income; and

(3) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this subdivision (3) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

(c) There shall be subtracted from federal adjusted gross income the following amounts:

(1) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(2) The amount of any refund or credit for overpayment of taxes measured by income levied by this state, or any other state of the United States or the District of Columbia, to the extent properly includable in gross income for federal income tax purposes;

(3) To the extent properly includable in gross income for federal income tax purposes, any railroad retirement benefits with respect to which taxation by any state is prohibited by federal law;

(4) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee; and

(5) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this subdivision (5) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

**§ 67-2-207.**

(a) The income of a nonresident individual derived from or connected with sources within this state shall be the sum of the net amount of items of income, gain, loss and deduction entering into the taxpayer's Tennessee adjusted gross income which are derived from or connected with sources within this state, including, but not limited to:

(1) Compensation paid to the taxpayer as an employee, independent contractor, or otherwise, for personal services performed in this state;

(2) Income from a business, trade or profession carried on in this state;

(3) The taxpayer's distributive share of partnership income, gain, loss and deduction, determined under Section 67-2-212;

(4) The taxpayer's pro rata share of S corporation income, gain, loss and deduction, determined under Section 67-2-212; and

(5) The taxpayer's share of estate or trust income, gain, loss and deduction, determined under Section 67-2-213.

(b) If a husband and wife determine their federal income tax on a joint return but determine their Tennessee income taxes separately, they shall determine their incomes derived from or connected with sources within this state separately as if their federal adjusted gross incomes had been determined separately.

(c) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in Section 67-2-210.

**§ 67-2-208.**

(a) Tennessee adjusted gross income of a resident trust or estate shall mean the taxable income of the fiduciary of such trust or estate as determined for

purposes of the federal income tax, to which there shall be added or subtracted, as the case may be, the share of the trust or estate in the Tennessee fiduciary adjustment, as defined in subsection (c) of this section.

(b) If any trust or portion of a trust, other than a trust created by the will of a decedent, has one (1) or more nonresident noncontingent beneficiaries, the Tennessee adjusted gross income of the trust shall be modified as follows:

The Tennessee adjusted gross income of the trust shall be the sum of:

(1) All such income derived from or connected with sources within this state; and

(2) That portion of such income derived from or connected with all other sources, which is derived by applying to all such income derived from or connected with all other sources a fraction, the numerator of which is the number of resident noncontingent beneficiaries, and the denominator of which is the total number of noncontingent beneficiaries.

(c) "Tennessee fiduciary adjustment" means the net positive or negative total of the following items relating to income, gain, loss or deduction of a trust or estate:

(1) There shall be added together:

(A) Any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee and

exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this item (B) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(C) To the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries, any interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this part.

(2) There shall be subtracted from the sum of such items:

(A) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local

authority, district, or similar public entity created under the laws of the state of Tennessee;

(C) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this item (C) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(D) The amount of any refund or credit for overpayment of income taxes levied by this state, to the extent properly includable in gross income for federal income tax purposes for the taxable year and to the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries for the preceding taxable year.

(d)

(1) The respective shares of a trust or estate and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Tennessee fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the trust or estate.

(2) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary in the Tennessee fiduciary

adjustment shall be in proportion to the beneficiary's share of the trust or estate income for such year, determined under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Tennessee fiduciary adjustment shall be allocated to the trust or estate.

(3) The commissioner may by rule establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed as may be appropriate and equitable. Such other method may be used by the fiduciary whenever the allocation of the fiduciary adjustment pursuant to subdivisions (1) and (2) would result in an inequity that is substantial both in amount and in relation to the amount of the fiduciary adjustment.

(e) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in Section 67-2-210.

**§ 67-2-209.**

(a) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident individual shall be the sum of the following:

(1) Tennessee adjusted gross income for the period of residence, computed as if the taxpayer's taxable year for Tennessee income tax purposes were limited to the period of residence; and

(2) The income derived from or connected with sources within this state determined in accordance with Section 67-2-207 for the period of nonresidence as if the taxpayer's taxable year for Tennessee income tax purposes were limited to the period of nonresidence.

(b) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident trust shall be the sum of the following:

(1) The share of Tennessee adjusted gross income for the period of residence, determined as if such trust were an individual whose taxable year for federal income tax purposes were limited to the period of residence, allocated to the trust in accordance with the methods of allocation set forth in Section 67-2-208; and

(2) The income derived from or connected with sources within this state for the period of nonresidence determined in accordance with Section 67-2-213 as if its taxable year for federal income tax purposes were limited to the period of nonresidence.

(c) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in Section 67-2-210.

**§ 67-2-210.**

(a) For purposes of this part, except as may be otherwise provided in this part, the term “derived from or connected with sources within this state” is defined in this section.

(b) Items of income, gain, loss and deduction derived from or connected with sources within this state shall be those items attributable to:

(1) The ownership or disposition of any interest in real, tangible or intangible personal property in this state;

(2) A business, trade, profession or occupation carried on in this state; and



(3) In the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under Section 67-2-212.

(4) In the case of a partner, the ownership interest in the partnership, to the extent determined under Section 67-2-212.

(c) Items of income, gain, loss and deduction derived from or connected with Tennessee sources do not include such items attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in Tennessee.

(1) Intangible personal property is employed in a business, trade, profession or occupation carried on in this state if such property's possession and control have been localized in connection with a business, trade, profession or occupation in Tennessee, so that the property's substantial use and value attach to and become an asset of such business, trade, profession or occupation.

(2) If intangible personal property of a nonresident is employed in a business, trade, profession or occupation carried on in Tennessee, the entire income from such property, including gains from its sale, regardless of where the sale is consummated, is income derived from or connected with sources within this state. Where a nonresident individual sells real or tangible personal property located in Tennessee, and as a result of such sale receives intangible personal property (for example, a note) that generates interest income or capital gain income, such interest income is

generally not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property; however, such capital gain income is attributable to the sale of the real or tangible personal property located in Tennessee. Therefore, such interest income to a nonresident does not constitute income derived from or connected with Tennessee sources. However, interest income derived from an instrument received as a result of a sale of real or tangible personal property located in Tennessee, where the instrument is employed in a business, trade, profession or occupation carried on in this state, does constitute income derived from or connected with Tennessee sources.

(3) A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, shall not be deemed to carry on a trade, business, profession or occupation in this state solely by reason of the purchase or sale of intangible property, or the purchase, sale or writing of stock option contracts, or both, for the nonresident's own account.

(d) Deductions with respect to net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with sources within this state, under rules adopted by the commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on within Tennessee by a nonresident individual:

(1) If the individual occupies, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place where such nonresident's affairs are systematically and regularly

carried on, notwithstanding the occasional consummation of isolated transactions outside Tennessee; or

(2) If activities in connection with the business are conducted in Tennessee with a fair measure of permanency and continuity.

(f) If a nonresident individual, or a partnership of which the nonresident individual is a member, carries on a business, trade, profession or occupation (as distinguished from personal services as an employee) both within and without Tennessee, the nonresident taxpayer may elect, or the commissioner may require the taxpayer, to allocate [as provided in subdivision (1)], or to apportion [as provided in subdivision (2)], to Tennessee on a fair and equitable basis, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation. For this purpose, compensation paid to nonresident employees and officers shall be attributed to Tennessee in accordance with the provisions of this subsection. Once an individual elects, or the commissioner requires in writing, the use of either method (allocation or apportionment), the taxpayer shall continue to use that method unless, after application in writing to the commissioner, the commissioner makes a written determination that the method used no longer reflects income that is fairly attributable to Tennessee. The methods to be used for allocation or apportionment are set forth in subdivisions (1) and (2) below.

(1) If the books of the business are kept so as regularly to disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with Tennessee sources, the Tennessee nonresident income tax return of the nonresident individual shall disclose the total amount of such items, the net amount of such items allocated to Tennessee, and the

basis upon which such allocation is made. If income is reported using this method, the taxpayer shall consistently allocate the amounts of income on returns filed with any other state in which the taxpayer carries on business where such states permit allocation on the basis of separate books and records.

(2) If the books and records of the business do not disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in Tennessee, such proportion shall be determined consistently with the provisions of Section 67-4-2012, unless the commissioner by rule provides for some other method of apportionment.

(g) The Tennessee adjusted gross income derived from or connected with Tennessee sources of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into the individual's Tennessee adjusted gross income, but only if, and to the extent that, the services were rendered within Tennessee.

(1) When a nonresident employee, who is compensated on an hourly, daily, weekly or monthly basis, is able to establish the exact amount of pay received for services performed in Tennessee, such amount is included in Tennessee adjusted gross income derived from or connected with sources within this state.

(2) When no such exact determination of pay received for services performed in Tennessee is possible, the income of employees, who are compensated on an hourly, daily, weekly or monthly basis shall be apportioned to Tennessee by multiplying the total compensation wherever

earned from the employment by a fraction, the numerator of which is the number of days spent working in Tennessee and the denominator of which is the total working days both within and without Tennessee. The product is included in Tennessee adjusted gross income derived from or connected with sources within this state. The term "total working days" does not include days on which the employee was not required to work, such as holidays, sick days, vacations and paid or unpaid leave. For purposes of this section, when a working day is spent working partly in Tennessee and partly elsewhere, it is considered one-half (1/2) of a day spent working in Tennessee.

(3) If a nonresident employee performs services for more than one employer both within and without Tennessee and is unable to determine the exact amounts earned or derived in Tennessee, such employee shall determine separately for each employer the compensation attributable to Tennessee sources. The sum of the amounts of compensation attributable to Tennessee sources shall be included in determining the Tennessee adjusted gross income derived from or connected with sources within this state.

(h) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or connected with sources within this state.

(i) The Tennessee adjusted gross income derived from or connected with sources within Tennessee of a nonresident member of a professional athletic team includes that proportion of such individual's compensation received for services rendered as a member of such team that the duty days spent within

Tennessee rendering services for such team in any manner during the taxable year bears to the total number of duty days rendering services for such team in any manner during the taxable year. In determining whether duty days are spent within Tennessee, travel days are duty days spent within Tennessee if Tennessee is the travel destination and are not duty days spent within Tennessee if Tennessee is not the travel destination; provided, when a game is scheduled to be played on a travel day, the duty day is considered to be spent where the game is scheduled to be played.

(j) For purposes of subsection (i), the following definitions apply.

(1) "Member of a professional athletic team" includes, but is not limited to, active players, players on the disabled list, and any other persons who are required to travel with and perform services on behalf of a professional athletic team, on a regular basis, including coaches, managers, trainers and equipment managers.

(2) "Duty days" means all days, from the first day of the official pre-season training period of the professional athletic team through the day of the last game, including post-season games, in which such team competes or is scheduled to compete during the taxable year. "Duty days" include game days, travel days and practice days. For a member of a professional athletic team who renders services for a team on a day that is not otherwise a "duty day" (e.g., representing a team at an all-star game), the member's "duty days" include such a day. "Duty days" for any member joining a team during the season shall begin on the day such person becomes a member and for any member leaving a team during the season shall end on the day such person ceases to be a member. "Duty days" do not include any try-out or pre-season cut days that a

player shall survive in order to obtain a contract or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(3) "Duty days spent within Tennessee" means duty days on which a member of a professional athletic team renders services, or is available to render services, for the member's team, within Tennessee. Days when a member is not available to render services for the team because of an injury are "duty days" for that member, but are not "duty days spent within Tennessee" for that member unless the team is based in Tennessee.

(4) "Compensation received for services rendered as a member of a professional athletic team" means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team on a date that is not otherwise a "duty day" (e.g., compensation for representing a team at an all-star game) during the taxable year.

"Compensation received for services rendered as a member of a professional athletic team" includes, but is not limited to, salaries, wages, guaranteed payments except as otherwise provided herein, bonuses, strike benefits, severance pay, and termination pay. Bonuses are includable in "compensation received for services rendered as a member of a professional athletic team" if they are earned as a result of play during the season or for playing in championship, playoff or "all star"

games. Bonuses are also so includable if paid for signing a contract, unless all of the following conditions are met:

(A) Is solely in consideration of a nonresident athlete giving up amateur and free agent status and agreeing to be the exclusive property of the team;

(B) Is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team;

(C) Is separate from the payment of salary or any other compensation; and

(D) Is nonrefundable.

(k) It shall be presumed that the method provided under subsection (i) is a fair and equitable method of determining the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee. However, the portion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee may be determined on the basis of a method other than that provided under subsection (i), if:

(1) The member establishes, to the satisfaction of the commissioner, that another method is fairer and more equitable; or

(2) In the discretion of the commissioner, the commissioner determines that the method provided under subsections (i) and (j) does not fairly and equitably reflect the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee.



(l) In the case of a nonresident entertainer or athlete (other than a member of a professional athletic team), who is paid specifically for a performance or athletic event in Tennessee, the entire amount received is included in Tennessee adjusted gross income derived from or connected with sources within Tennessee if the entertainer or athlete is carrying on a business, trade, profession or occupation in Tennessee (and entertainer or athlete's presence for business in Tennessee is not casual and isolated).

(m) In the case of a nonresident entertainer who is not paid specifically for a performance in Tennessee, the entertainer's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the entertainer's income received from performances within and without Tennessee that the number of performances that the entertainer gave (or, in the case of an understudy, was available to give) within Tennessee during the taxable year bears to the total number of performances that the entertainer was obligated to perform (or, in the case of an understudy, was obligated to be available to perform), under contract or otherwise, within and without Tennessee during the taxable year.

(n) In the case of a nonresident athlete (other than a member of a professional athletic team) who is not paid specifically for athletic events in Tennessee, the athlete's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the athlete's income received from athletic events within and without Tennessee that the number of athletic events within Tennessee in which the athlete played during the taxable year bears to the total number of athletic events within and without Tennessee in which the athlete played during the taxable year.

(o) Income directly or indirectly derived by an athlete, entertainer or performing artist, from closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within this state as a result of the rendition of services by such athlete, entertainer or performing artist, shall constitute income derived from or connected with sources within this state only to the extent that such transmissions were received or exhibited within this state.

**§ 67-2-211.**

(a) In determining the Tennessee adjusted gross income of a resident partner of a partnership or a resident shareholder of an S corporation, any adjustments described in Section 67-2-206, which relates to an item of partnership or S corporation income, gain, loss or deduction, shall be made in accordance with the partner's distributive share or a shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with the partner's or shareholder's share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally.

(b) Each item of partnership and S corporation income, gain, loss or deduction shall have the same character for a partner or shareholder under this part as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if it were realized directly from the source from which it was realized by the partnership or S corporation or as if it were incurred in the same manner as it was incurred by the partnership or S corporation.

(c) Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this part, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

**§ 67-2-212.**

(a) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident partner includes the partner's distributive share of all items of partnership income, gain, loss and deduction entering into federal adjusted gross income to the extent such items are derived from or connected with Tennessee sources.

(b) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital;

(2) Allocates to the partner, as income or gain from sources without Tennessee, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources without this state to partnership income or gain from all sources, except as authorized in subsection (c) of this section; or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within this state than the partner's proportionate share, for federal income tax purposes, of

partnership loss or deduction generally, except as authorized in subsection (c).

(c)

(1) The character of partnership or corporation items for a nonresident partner or S corporation shareholder shall be determined in accordance with Section 67-2-211.

(2) The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (b), having the principal purpose of avoidance or evasion of tax under this part, shall be determined under Section 67-2-211(c).

(d) The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources within this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the commissioner may require.

(e) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual, who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in Section 67-4-2004(7), includes such shareholder's pro rata share of the S corporation's separately computed income or loss entering into federal adjusted gross income to the extent such income or loss is derived from or connected with Tennessee sources.

(f) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in Section 67-4-2004(7), does not include such shareholder's pro rata

share of the S corporation's nonseparately computed income or loss entering into federal adjusted gross income.

(g) With respect to a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in Tennessee, as defined in Section 67-4-2004(7), the portion of such shareholder's pro rata share of the modifications described in Section 67-2-206 relating to the S corporation's:

(1) Separately computed income or loss that is derived from or connected with sources within Tennessee is to be determined so as to accord with the definition of the term "derived from or connected with sources within this state" set forth in Section 67-2-210;

(2) Nonseparately computed income or loss is considered to be derived from or connected with sources without Tennessee.

(h) With respect to a nonresident shareholder of an S corporation neither doing business nor having the right to do business in Tennessee, as defined in Section 67-4-2004(7), no portion of such shareholder's pro rata share of the S corporation's separately or nonseparately computed income or loss, or the adjustments described in Section 67-2-206 that relate to S corporation items of income or gain, is considered to be derived from or connected with sources within Tennessee.

#### **§ 67-2-213.**

(a) The income derived from or connected with sources within this state of a nonresident trust or estate shall be determined as follows:

(1) There shall be determined its share of income, gain, loss and deduction from Tennessee sources under Section 67-2-212.

(2) There shall be added or subtracted, as the case may be, the amount derived from or connected with Tennessee sources of any income, gain, loss and deduction which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which is recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the trust or estate.

(b) Deductions with respect to net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources within this state, under rules of the commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

(c) The share of a nonresident trust or estate in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; and the share of a nonresident beneficiary of any trust or estate, in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; shall be determined as follows:

(1) There shall be determined the items of income, gain, loss and deduction which are derived from or connected with sources within this state, which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which enter into the definition of federal distributable net income of the trust or estate for the taxable year, including any such items from another trust or estate of which the subject trust or estate is a beneficiary. The determination of source shall be made in accordance with the provisions of Section 67-2-207 in the same manner as for a nonresident individual.

(2) The amounts determined under subdivision (1) shall be allocated among the trust or estate and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(3) The amount allocated under subdivision (2) shall have the same character under this part as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if it were realized directly from the source from which it was realized by the trust or estate, or as if it were incurred in the same manner as it was incurred by the trust or estate.

(d)

(1) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary, including, solely for the purpose of this allocation, resident beneficiaries, in the net amount, determined under subdivision (a)(1), shall be in proportion to the beneficiary's share of the trust or estate income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the trust or estate.

(2) The commissioner may by rule establish such other method or methods of determining the respective shares of the beneficiaries and of the trust or estate in its income derived from sources within this state as may be appropriate and equitable. Such method may be used by the fiduciary whenever the allocation of such respective shares under

subsections (c) and (d) would result in an inequity that is substantial in amount.

**§ 67-2-214.**

(a) Any resident individual or part-year resident individual of this state shall be allowed a credit against the tax otherwise due under this part in the amount of any income tax, levied on such resident or part-year resident for the taxable year by another state of the United States or the District of Columbia, on income derived from sources therein and which income is also subject to tax under this part.

(b) In the case of a resident individual, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other taxing jurisdiction bears to such taxpayer's Tennessee adjusted gross income under this part.

(c) In the case of a part-year resident individual, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other jurisdiction during the period of residency bears to such taxpayer's Tennessee adjusted gross income during the period of residency under this part, nor shall the allowance of the credit provided under this section reduce the tax otherwise due under this part to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Tennessee adjusted gross income.

(d)



(1) If, as a direct result of the change to or correction of a taxpayer's income tax return, filed with another state of the United States or the District of Columbia, by the tax officers or other competent authority of such jurisdiction, the amount of tax of such other jurisdiction that the taxpayer is finally required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the final determination of such amount, an amended return under this part, and shall concede the accuracy of such determination or state wherein it is erroneous. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax plus interest for any taxable year affected.

(2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the date of filing of such amended return, an amended return under this part and shall give such information as the commissioner may require. The commissioner may redetermine and the taxpayer shall be required to pay the tax plus interest for any taxable year affected.

(3) In the case of a redetermination of the tax owing to another state of the United States or the District of Columbia resulting in a taxpayer owing additional taxes levied by this part, the statutory period for

the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the other state or other such jurisdiction.

(e) A taxpayer shall not be allowed credit under this section if the taxpayer has claimed or will claim a credit against the income tax levied by the other jurisdiction for the tax paid or payable under this part.

(f) There shall be no credit for interest or penalties paid to another state or to the District of Columbia.

**§ 67-2-215.**

(a)

(1)(A) With respect to each of its nonresident partners or shareholders, each pass-through entity, doing business in this state or having income derived from or connected with sources within this state, shall for each taxable period, either:

(i) Timely file with the commissioner an agreement as provided in subdivision (2); or

(ii) Make payment to the commissioner as provided in subdivision (3) or subdivision (4).

(B) Any pass-through entity that timely files an agreement as provided in such subdivision (2) with respect to a nonresident partner or shareholder for a taxable period shall be considered to have timely filed

such an agreement for each subsequent taxable period. Any pass-through entity which does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods.

(2)(A) An agreement under this subdivision shall be an agreement, on a form as may be prescribed by the commissioner, by a nonresident partner or shareholder of the pass-through entity:

(i) To file returns in accordance with all applicable provisions of Title 67 and to make timely payment of all taxes levied on the partner or shareholder by this state measured by the income of the pass-through entity; and

(ii) To be subject to personal jurisdiction in this state for purposes of the collection of all taxes, together with related additions to tax, interest and penalties, levied on the partner or shareholder by this state measured by the income of the pass-through entity.

(B) Such an agreement shall be considered timely filed for a taxable period and for all subsequent taxable periods if it is filed on or before the date the annual return for such taxable period is required to be filed pursuant to Section 67-2-217, including extensions.

(3) For S corporations, the payment shall be in an amount equal to the tax rate provided in Section 67-2-204 multiplied by the sum of:

(A) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under Section 67-2-217, the amount of such shareholder's pro rata share of the S corporation's nonseparately

computed items, as defined in Section 1366 of the Internal Revenue Code, to the extent includable in the shareholder's Tennessee adjusted gross income; and

(B) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under Section 67-2-217, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in Section 1366 of the Internal Revenue Code, to the extent includable, if the shareholder is an individual, in the shareholder's Tennessee adjusted gross income, or, if the shareholder is a trust or estate, in the shareholder's Tennessee adjusted gross income.

(4) For pass-through entities other than S corporations, the payment shall be in an amount equal to the tax rate provided in Section 67-2-204 multiplied by, to the extent derived from or connected with sources within this state as reflected on the entity's annual return for the taxable period under Section 67-2-217, the amount of the subject partner's distributive share of the entity's income determined under Section 704 of the Internal Revenue Code.

(5) Any amount paid by the pass-through entity to this state with respect to any taxable period, pursuant to subdivisions (3) or (4), shall be considered to be a payment by the partner or shareholder on account of the tax measured by income levied on the partner or shareholder for such taxable period pursuant to this part. If the tax years of the pass-through entity and the partner, member or shareholder are different, then the payment by the pass-through entity shall be considered to be a payment

by the partner, member or shareholder for the partner's, member's or shareholder's tax year which begins in the tax year of the pass-through entity. A pass-through entity shall be entitled to recover, by off-set or otherwise, a payment made pursuant to this subdivision from the partner or shareholder on whose behalf the payment was made. Any estimated tax installment shall be made on or before the due date of such installment pursuant to Section 67-2-218, and any other payment for a taxable period shall be made at or before the date the annual return for such taxable period is required to be filed pursuant to Section 67-2-217.

(b) In lieu of partners or shareholders of pass-through entities filing separate returns under Section 67-2-218, the commissioner may provide for the filing of a group return for electing nonresident partners or shareholders by a pass-through entity doing business in this state, as defined in Section 67-4-2004(7), or having income derived from or connected with sources within this state. As required by the commissioner, the pass-through entity as agent for the electing partners or shareholders shall make the payments of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners or shareholders. The provisions of this subsection shall also apply to trusts and estates, and whenever reference is made in this subsection to pass-through entities and partners, such reference shall be construed as including trusts, estates and beneficiaries thereof.

**§ 67-2-216.**

(a) In lieu of members of professional athletic teams filing separate returns, under Section 67-2-218, the commissioner may provide for the filing of a composite return for every qualifying nonresident member of a professional

athletic team by such team, if such team is doing business in this state or the members of such team have compensation that is received for services rendered as members of such team and that is derived from or connected with sources within this state.

(b) If a professional athletic team is required to file a composite return pursuant to this section, the commissioner may require such team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under Section 67-2-221, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by such qualifying nonresident members.

(c) The commissioner may require a professional athletic team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under Section 67-2-221, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by:

(1) Every resident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team; and

(2) Every nonresident member who is not a qualifying nonresident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

(d) Any amount paid by a professional athletic team to this state with respect to any taxable period pursuant to this section shall be considered to be a payment by the member on account of the income tax levied on the member for

such taxable period pursuant to this part. The team shall be entitled to recover a payment made pursuant to this section from the member on whose behalf the payment was made.

(e) For purposes of this section, “qualifying nonresident member” means a member of a professional athletic team who is a nonresident individual for the entire taxable year, who does not maintain a permanent place of abode in Tennessee at any time during the taxable year, who does not have income derived from or connected with sources within this state other than compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

**§ 67-2-217.**

(a) Each partnership having any income derived from sources in this state, determined in accordance with the provisions of this part, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each partner, whether or not a resident of this state, who would be entitled to share in the net income if distributed; the amount of the distributive share of each partner derived from or connected with sources within this state; the amount of the distributive share of each partner derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by rules or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The partnership shall, on or before the day on which such return is filed, furnish to each person, who was a partner during the taxable year, a copy of such information as shown on the return. The provisions of this subsection shall also apply to trusts and estates, and their beneficiaries. Wherever reference

is made in this subsection to partnerships and their partners, such reference shall be construed as including trusts and estates and their beneficiaries, respectively.

(b) Each S corporation doing business in this state, as defined in Section 67-4-2004(7), shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each shareholder; the pro rata share of each shareholder of S corporation income derived from or connected with sources within this state; the pro rata share of each shareholder of S corporation income derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by rules or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The S corporation shall, on or before the day on which such return is filed, furnish to each person, who was a shareholder during the taxable year, a copy of such information as shown on the return.

**§ 67-2-218.**

(a) A taxpayer with Tennessee adjusted gross income shall file a Tennessee tax return with the commissioner on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year, containing such information as the commissioner may reasonably require, and on forms as prescribed by the commissioner. The commissioner is authorized to require taxpayers to include with the return copies of their federal tax return, including withholding statements, schedules and forms. The return shall coincide with the tax period covered by the taxpayer's federal return, if any.

(b) Without assessment, notice or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.



(c) For purposes of this section, there shall be four (4) required installments for each taxable year. The due date for the first required installment is the fifteenth day of the fourth month of the taxable year. The due date for the second required installment is the fifteenth day of the sixth month of the taxable year. The due date for the third required installment is the fifteenth day of the ninth month of the taxable year. The due date for the fourth required installment is the fifteenth day of the first month of the next succeeding taxable year.

(d)

(1) Except as provided in subdivision (2), the amount of any required installment shall be twenty-five percent (25%) of the required annual payment, as defined in subsection (o).

(2)

(A) In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1), the amount of such required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subdivision shall be recaptured by increasing the amount of the next required installment by the amount of such reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subdivision.

(B) In the case of any required installment, the annualized income installment is the excess, if any, of:

(i) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee adjusted gross income for months in the taxable year ending before the due date for the installment, over

(ii) The aggregate amount of any prior required installments for the taxable year.

(C) For purposes of this subdivision (2), the applicable percentage for the first required installment is twenty-two and one-half percent (22.5%), the applicable percentage for the second required installment is forty-five percent (45%), the applicable percentage for the third required installment is sixty-seven and one-half percent (67.5%), and the applicable percentage for the fourth required installment is ninety percent (90%).

(e) For purposes of subsection (f), the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. For purposes of subsection (f), the period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier: the fifteenth day of the fourth month of the next succeeding taxable year, or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subsection, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(f) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax

an amount determined by applying interest at the rate prescribed by Section 67-1-801(a) to the amount of the underpayment for the period of the underpayment.

(g) The application of this section to taxable years of less than twelve (12) months shall be in accordance with rules adopted by the commissioner.

(h) Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax levied under this part for the taxable year.

(i) If an individual has paid as an installment of estimated tax an amount in excess of the amount determined to be the correct amount of such installment, such amount shall be credited against any unpaid installment or against the tax. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, then, unless the individual has given written notice to the commissioner that such overpayment is to be refunded, such overpayment shall be credited against any installment of estimated tax due for the next succeeding taxable year.

(j)

(1) If the tax, reduced by the tax withheld under this part, shown on the return or otherwise, is five hundred dollars (\$500) or less, no addition to tax shall be levied under subsection (f).

(2) No addition to tax shall be levied under subsection (f) for any taxable year if:

(A) The preceding taxable year was a taxable year of twelve (12) months; and

(B) The individual did not have any liability for tax for the preceding taxable year and throughout such year the individual was:

(i) A resident individual; or

(ii) A nonresident individual or part-year resident individual with income, gain, loss or deduction derived from or connected with sources within this state.

(k) For purposes of applying this section, the tax withheld under this part shall be deemed a payment of estimated tax, and an equal part of such tax withheld shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which such tax was actually withheld, in which case the tax so withheld shall be deemed payments of estimated tax on the dates on which such tax was actually withheld.

(l) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be levied under subsection (f) with respect to any underpayment of the fourth required installment for the taxable year.

(m) For purposes of this section, if an individual is a farmer or fisherman for any taxable year, the following provisions shall apply:

(1) There shall be only one (1) required installment for the taxable year;

(2) The due date for such installment shall be January 15 of the following taxable year;

(3) The amount of such installment shall be equal to the lesser of:

(A) Sixty-six and two-thirds percent (66.67%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66.67%) of the tax for such year;

or

(B) If the preceding taxable year was a taxable year of twelve (12) months and the individual filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return for the preceding taxable year;

(4) If, on or before March 1 of the following taxable year, the farmer or fisherman files a return and pays in full the amount computed on the return as payable, no addition to tax shall be levied under subsection (f) with respect to any underpayment of the required installment, as provided in subdivision (3), for the taxable year; and

(5) An individual is a farmer or fisherman for any taxable year if such individual is a farmer or fisherman, as defined in Section 6654(i)(2) of the Internal Revenue Code, for the taxable year.

(n)

(1) Except as otherwise provided in this subsection, this section shall apply to any trust or estate.

(2) With respect to any taxable year ending before the date two (2) years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent, or

(B) Any trust:

(i) All of which was treated under Sections 671 to 679, inclusive, of the Internal Revenue Code as owned by the decedent, and

(ii) To which the residue of the decedent's estate will pass under the will or, if no will is admitted to probate,

which is the trust primarily responsible for paying debts, taxes, and expenses of administration.

(3) In the case of any trust or estate to which this section applies, for any required installment, the annualized income installment is the excess, if any, of:

(A) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee adjusted gross income and the adjusted federal alternative minimum taxable income for months in the taxable year ending before the date one month before the due date for the installment, over

(B) The aggregate amount of any prior required installments for the taxable year.

(o) "Required annual payment" means the lesser of:

(1) Ninety percent (90%) of the tax shown on the return for the taxable year, or if no return is filed, ninety percent (90%) of the tax for such year; or

(2) If the preceding taxable year was a taxable year of twelve (12) months and the taxpayer filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return of the taxpayer for such preceding taxable year.

**§ 67-2-219.**

(a) An extension of time of four (4) months in which to file any return, statement or other document due or required under this part will be granted, provided that on or before the original due date of the return, the taxpayer makes the request and pays taxes equal to one hundred percent (100%) of the liability

for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. The commissioner may require the filing of a tentative return and the payment of the tax reported to be due thereon in connection with any extension. Any additional tax which may be found to be due on the filing of a return, statement or other document as allowed by such extension shall bear interest at the rate prescribed by Section 67-1-801(a) from the original due date of such tax to the date of actual payment. Notwithstanding the provisions of Section 67-2-220, no penalty shall be imposed on account of any failure to pay the amount of tax reported to be due on a return, statement or other document within the time specified under the provisions of this part if the excess of the amount of tax shown on the return, statement or other document over the amount of tax paid on or before the original due date of such return, statement or other document is no greater than ten percent (10%) of the amount of tax shown on such return, statement or other document, and any balance due shown on such return, statement or other document is paid on or before the extended due date of such return, statement or other document.

(b) The commissioner may, in the commissioner's sole discretion, grant an additional extension of time of no more than two (2) months in which to file the return required by this part, on good and reasonable cause shown by the taxpayer before the due date of the return as extended under the provisions of subsection (a); provided, that if the taxpayer shows, within the time prescribed by this subsection, and on such form as may be prescribed by the commissioner, that the Internal Revenue Service has granted the taxpayer an extension of time to file the taxpayer's federal income tax return for the same taxable year, then the commissioner shall grant the taxpayer an extension of like amount to file the Tennessee tax return.

**§ 67-2-220.**

(a) If any taxpayer fails to pay the amount of tax reported to be due on the taxpayer's return within the time specified under the provisions of this part, there shall be imposed a penalty equal to ten percent (10%) of such amount due and unpaid. Such amount shall also bear interest at the rate prescribed by Section 67-1-801(a) from the due date of such tax until the date of payment.

(b) The commissioner may waive all or part of the penalties provided under this part, subject to the provisions of Section 67-1-803.

(c) In case of each failure to file a statement of payment to another person required under the authority of this part, including the duplicate statement of tax withheld on wages on the date prescribed therefor, determined with regard to any extension of time for filing, there shall be paid, upon notice and demand by the commissioner, by the person so failing to file the statement, a penalty of five dollars (\$5.00) for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000). The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

**§ 67-2-221.**

(a) Each employer, maintaining an office or transacting business within this state and making payment of any wages taxable under this part to a resident or nonresident individual, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages during the



calendar year. The method of determining the amount to be withheld shall be prescribed by rules promulgated by the commissioner.

(b) The commissioner may by rule require persons other than employers:

(1) To deduct and withhold taxes from payments made by such persons to residents of this state, nonresidents and part-year residents;

(2) To file a withholding return as prescribed by the commissioner;

and

(3) To pay over to the commissioner, or to a depository

designated by the commissioner, the taxes so required to be deducted and withheld, in accordance with a schedule established in such rules.

(c) The commissioner may adopt rules providing for withholding from:

(1) Remuneration for services performed by an employee for the employer that do not constitute wages;

(2) Wages paid to an employee by an employer not maintaining an office or transacting business within this state; or

(3) Any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this part if the employer and the employee, or, in the case of any other type of payment, the person making and the person receiving such payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may, by rule, prescribe. For purposes of this part remuneration, wages or other payments with respect to which such an agreement is made shall be regarded as if they were wages paid to an employee by an employer maintaining an office or transacting business within this state to the extent

that such remuneration or wages are paid or other payments are made during the period for which the agreement is in effect.

(d) Where any person who is not an employer is required by rule to withhold wages or other payments, the provisions of this section apply to such person as if the person were an employer and as if all amounts withheld were wages.

(e) Every employer, irrespective of whether or not such employer deducted and withheld the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts so provided and thereafter the tax, against which such amounts would have been credited, is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case shall the employer be relieved from liability for any penalties, interest or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(f) Every employer subject to the provisions of this section shall file a return, in such form as shall be determined by the commissioner, and remit the amount withheld at the same times the employer is required under federal law and regulations to pay over federal taxes required to be deducted and withheld. Failure to remit timely the amount withheld shall subject the employer to those penalties and interest described in Section 67-1-801.

(g) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Tennessee for the payment thereof to the commissioner in the manner and at the time provided in this section. To secure the payment of any amounts withheld and not

remitted as required by this section, the state shall have a lien upon all interests in property, either real or personal, tangible or intangible, owned or subsequently acquired by the employer, so long as any delinquency continues. The lien of the state shall be entitled to priority over any other lien of any kind whatsoever with regard to such trust fund taxes whether or not notice of the lien has been filed.

(h) All amounts deducted, withheld and remitted shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against an employer in respect to any monies so deducted and withheld from wages and paid over to the commissioner in compliance or intended compliance with this section.

(i) Every employer required to deduct and withhold tax under this part from the wages of an employee shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the commissioner shall prescribe.

(j) Every employer shall also file an annual statement with the commissioner summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and providing such other information required by the commissioner. The statement shall be filed on or before March 1 of the year following that for which the report is made and shall be on such forms as prescribed by the commissioner.

(k) Failure to file the statements required by subsection (j) within the time prescribed therefor shall subject the employer to a penalty of five hundred dollars (\$500) for each such failure, which shall be in addition to any criminal penalty

otherwise provided for failure to file a return or for filing a false or fraudulent return. The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

(l) No later than fifteen (15) days after becoming subject to the withholding provisions of this section, every employer shall register with the department by completing and filing a registration information form prescribed by the commissioner. Whenever an employer ceases doing business, or for any other reason is no longer subject to the withholding provisions of this section, it shall so notify the commissioner within fifteen (15) days thereof. Any employer who fails timely to register or notify the commissioner shall be subject to a penalty of one thousand dollars (\$1,000). The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

(m)

(1) Liability for taxes or withholding under this part may be challenged only upon compliance with the provisions of Section 67-1-1801 or Section 67-1-1802, except as provided in Section 67-2-233(a).

(2) No court shall enjoin payment, withholding or collection of the tax levied under this part, and no court shall enjoin or in any manner impede reporting, administration, or enforcement under this part, except that collection or withholding from a plaintiff in a suit instituted in compliance with Section 67-1-1801 shall be stayed upon that plaintiff's compliance with the provisions for stay set out in that section.

(n) The commissioner may establish by rule periodic filing and payment dates in those instances where the commissioner deems it to be in the best interests of the state to do so.

(o) Wages upon which tax is required to be withheld shall be taxable under this part as if no withholding were required, but any amount of tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

(p) The commissioner may adopt rules requiring returns of information to be made and filed on or before April 15 of each year by any person making payment or crediting in any calendar year amounts of one hundred dollars (\$100) or more, or ten dollars (\$10) or more in the case of interest or dividends, to any person who may be subject to the tax levied under this part. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities compensations, remuneration, pensions, gambling winnings, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. The commissioner may also require that persons making the returns under this subsection furnish to their payees, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of payment which has been reported to the commissioner in respect of such payee.

**§ 67-2-222.** Employers shall also be subject to the provisions of Section 67-1-703 relative to payment in immediately available funds and electronic filings.

Notwithstanding the provisions of Section 67-1-703 to the contrary, an employer who is required by federal law to file its return electronically or to make payment of withheld

taxes in immediately available funds, shall file and pay its Tennessee return and liability in like manner.

**§ 67-2-223.**

(a) If the amount of any taxpayer's adjusted gross income or taxable income reported on the taxpayer's federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, resulting in a change in the amount of tax due under this part, the taxpayer shall pay any additional tax due, plus interest, and file an amended return under this part, or such other form as the commissioner shall prescribe, reporting such change or correction, within ninety (90) days after the final determination of such change, correction, or renegotiation, and shall concede the accuracy of such determination or state wherein it is erroneous.

(b) Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended return under this part and pay any additional tax due, plus interest, pursuant to Section 67-1-801.

(c) In the case of a redetermination of adjusted gross income by the Internal Revenue Service resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner or the commissioner's delegate is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within one (1) year from the date of such determination by the Internal Revenue Service.

**§ 67-2-224.**

(a) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the secretary or the designee will assist in the overall administration of the tax levied by this part. The cost of the services performed by the secretary or the designee in such activities under the terms of any agreement may be paid from the appropriations for the general operations of the department of revenue.

(b) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the commissioner will assist in the overall administration of tax administration functions in respect to the federal income tax. Such agreement shall make provision for the payment by the United States of costs of the services performed on its behalf.

(c) The commissioner may enter into agreements with the secretary of the treasury of the United States to provide for the compliance with this part of each department or agency of the United States in withholding of state income taxes from the wages of federal employees and paying the same to this state.

(d) The commissioner may enter into agreements with the tax officers of other states, which require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states under this part. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules prescribed by the commissioner, may relieve employers in this state from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are

subject to the condition that the tax officers of such other states grant similar treatment to residents of this state.

**§ 67-2-225.**

(a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, rules adopted or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Any return, statement or other document required of a partnership shall be signed by one or more partners if required by and then in accordance with rules adopted or instructions prescribed by the commissioner. The fact that a partner's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Any return, statement or other document required of an S corporation shall be signed by one or more officers if required by and then in accordance with rules adopted or instructions prescribed by the commissioner. The fact that an officer's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the S corporation.

(d) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to



this part, including a copy of a federal income tax return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ **67-2-226.** Any person, required to collect or withhold, truthfully account for and pay over the tax levied under this part, who willfully fails to collect or withhold such tax or truthfully account for and pay over such tax, shall be liable for the total amount of the tax evaded, or not accounted for and paid over, plus interest thereon, and a penalty equal in amount to the total tax evaded, or not collected, or not accounted for and paid over.

§ **67-2-227.** A nonresident who withholds taxes in compliance with this part shall not be found to be doing business in this state solely by reason of such withholding.

§ **67-2-228.** No tax levied on any taxpayer by the provisions of this part shall be reduced, modified, obligated or expended as an incentive for any person to conduct, locate or expand any business in this state. Nothing in this section shall prohibit the general assembly from appropriating any funds for this purpose.

§ **67-2-229.** Any husband and wife who elect to file a joint return under the federal income tax for any taxable year shall be required to file jointly with respect to such taxable year for purposes of this part, in which event their tax liability shall be joint and several, except as otherwise provided in Section 67-2-230, and any husband and wife, who elect to file separately under the federal income tax for any taxable year, shall be required to file separately with respect to such taxable year for purposes of this part; provided:

(1) If either the husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Tennessee adjusted gross incomes on separate forms as married individuals filing separately unless such husband and wife determine their federal taxable income

jointly and both elect to determine their joint Tennessee adjusted gross income as if both were residents; or

(2) If any husband and wife, both of whom are nonresidents, elect to file a joint return under the federal income tax for any taxable year, and only one of them has income derived from or connected with sources within this state during such taxable year, only the spouse with income derived from or connected with sources within this state shall be required to file a return in this state; and if only the spouse with income derived from or connected with this state files such a return in this state, a separate tax shall be determined on such spouse's separate Tennessee adjusted gross income as a married individual filing separately, unless such husband and wife both elect to determine their joint Tennessee adjusted gross income as if both had income derived from or connected with sources within this state.

**§ 67-2-230.**

(a) Any individual who has made a joint return under this part may elect to seek relief under the provisions of subsection (b) and if such individual is eligible to elect the application of subsection (c), then such individual may, in addition to any election under subsection (b), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).

(b)

(1) Under procedures prescribed by Section 67-1-1801 for taxpayer conferences, if:

(A) A joint return has been made for a taxable year and on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(B) The other individual filing the joint return establishes that in signing the return such other individual did not know, and had no reason to know, that there was such an understatement;

(C) Taking into account all the facts and circumstances, it is inequitable to hold such other individual liable for the deficiency in tax for such taxable year attributable to such understatement or portion of such understatement, as the case may be; and

(D) Such other individual elects the application of this subsection, in such form as the commissioner may prescribe, not later than the date which is two (2) years after the date the commissioner has begun collection activities with respect to the individual making the election; then such other individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to such understatement.

(2) If the electing individual satisfies the conditions of subdivision (1) except subdivision (1)(B), and establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, such individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(c)

(1) If an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for

any deficiency that is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to such individual under subsection (d).

(2) The electing individual shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

(3) An individual shall be eligible to elect the application of this subsection if:

(A) At the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(B) Such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the twelve (12) month period ending on the date such election is filed.

(4) If assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid.

(5) If the individual electing under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency or portion thereof which is not allocable to such individual under subsection (d), the election shall not apply to such deficiency or portion thereof, unless the individual with actual knowledge establishes that the electing individual signed the return under duress.

(6) The portion of the deficiency for which the individual electing under this subsection is liable shall be increased by the value of any disqualified asset transferred to the individual. For purposes of this section, "disqualified asset" means any property or right to property transferred to an electing individual with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax. Any transfer which is made after the date that is one year before the date on which a notice of proposed deficiency assessment is sent, other than any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax, shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(d)

(1) The portion of any deficiency on a joint return allocated to an individual electing under subsection (c) shall be the amount that bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under this subdivision bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency or portion thereof is attributable to the disallowance of a credit, and such item is allocated to one individual under subdivision (3), then such deficiency or portion thereof shall be allocated to such individual. Any such item shall not be taken into account under subdivision (1).

(3) Except as provided in subdivisions (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year. If the allocation of any item is appropriate due to fraud of one or both individuals, the commissioner may provide for such allocation in a manner as prescribed in rules adopted in accordance with Title 67, Chapter 1.

(4) If a credit under Section 67-2-214 would be disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the joint filers appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either joint filer and such liability shall be allocated appropriately between the joint filers.

(e) The commissioner shall conduct an informal conference, determine what relief, if any, is available to an electing individual under this section, issue a conference decision, and give the individual written notification of the decision in the manner prescribed for informal conferences pursuant to Section 67-1-1801.

(f) The commissioner shall, by mail at the last known address, notify the non-electing individual filing the joint return of the election and offer that individual an opportunity to participate in any informal conference.

§ **67-2-231.** The commissioner may provide that nonresident persons whose income derived from or connected with sources in this state is de minimis, are exempt from the tax levied by this part.

§ **67-2-232.** The taxes collected under this part shall be earmarked for and allocated to the general fund.

§ **67-2-233.**

(a)

(1) Notwithstanding any provision of this part to the contrary, not later than one hundred twenty (120) calendar days following passage of this act, each employer, who maintains an office or transacts business within this state and makes payment of any wages to a resident or nonresident individual, shall register with the department by completing and filing withholding registration information forms prescribed by the commissioner. The forms shall include the name, address and social security number of each person to whom taxable wages are currently being paid by the employer.

(2) Notwithstanding any provision of Title 29, Chapter 14, Part 1, or any other law to the contrary, any nongovernmental employer required to register and file withholding registration information forms may bring an action, in the Chancery Court of Davidson County, for declaratory judgment concerning the constitutionality or validity of the tax levied in this part, and such action may be brought prior to August 1, 2001. Appeal from any such action shall be taken directly to the supreme court. Because of the paramount public interest in stability and certainty in the state's revenue system, it is the legislative intent that any such action be handled in an expedited manner by the chancery court and that any appeal from such action be handled in an expedited manner by the supreme court.

(b) Notwithstanding any provision of this part to the contrary, for any taxable year ending on or before December 31, 2003, "required annual payment," for purposes of Section 67-2-218, means seventy percent (70%) of the tax shown on the return for the taxable year, or if no return is filed, seventy percent (70%) of the tax for such year.

(c) Notwithstanding any provision of this title to the contrary, the commissioner may waive all or part of any penalty imposed under this part and arising out of a taxable period ending on or before December 31, 2003, upon written request of the taxpayer, if the commissioner determines, in the commissioner's sole discretion, that the taxpayer has shown good and reasonable cause for the failure; provided that no penalty shall be waived if the failure is the result of gross negligence or willful disregard of the law.

§ **67-2-234.** Notwithstanding any provision of law to the contrary, except as provided in Section 67-2-223(c) an income tax refund shall not be made unless:

(1) The refund claim is filed within one year from December 31 of the year in which payment was made, or

(2) If no refund claim has been filed but the commissioner is in possession of proper proof and facts that a refund is due, the commissioner makes the refund within one year from December 31 of the year in which payment was made.

**SECTION 29.** Tennessee Code Annotated, Title 9, Chapter 4, Part 52, is amended by adding the following language as new, appropriately designated sections:

§ **9-4-5204.** Notwithstanding any law to the contrary, in no fiscal year shall appropriations for general expenditures from state tax revenues received in such year exceed six percent (6%) of the state's economy. For purposes of this section, "general expenditures" shall mean appropriations of amounts collected from state taxes identified



pursuant to Section 9-4-5202(b), to the debt service fund, the capital projects fund, the highway fund, the education trust fund and the general fund. For purposes of this section, the "state's economy" shall be measured by personal income as provided in Section 9-4-5201(b).

**§ 9-4-5205.** If state tax revenues collected in any fiscal year exceed the amount of such revenues that can be appropriated under the limit imposed in this chapter, such excess amount shall be rebated to taxpayers as provided in this section. To the extent practical, rebates shall be made to taxpayers on a pro rata basis in relation to taxes paid under the provisions of Section 67-2-204 in the tax year for which such excess collections were received. The commissioner of revenue shall determine the estimated aggregate cost of processing such tax rebate payments to taxpayers. To the extent excess tax revenues exceed the processing cost for rebates, the net amount shall be the aggregate amount of rebates to be made. If the aggregate cost of processing rebates is estimated to exceed the excess tax collections, then such excess tax collections shall be placed into the reserve for revenue fluctuations established in Section 9-4-211.

**SECTION 30.** The commissioner is authorized to promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of Section 5 through 29 of this act. This authority should be interpreted broadly to enable the commissioner to give effect to the legislative intent. Such rules, to the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity and emergency rules.

### **III. CONSTITUTIONAL CONVENTION.**

#### **SECTION 31.**

(a) In order to ascertain the will of the people with respect to whether or not a limited constitutional convention should be called, there shall be submitted to the people

of the state at the regular general election to be held on Thursday, August 1, 2002, under the general election laws of the state in the several counties, one question, which shall be printed in full on each ballot or voting machine, in words and figures as follows:

CONSTITUTIONAL REFERENDUM

Question: Shall a limited convention be held to alter Article II, Section 28 of the present Constitution of the State of Tennessee, relative to taxation?

\_\_\_\_\_FOR THE CONVENTION

\_\_\_\_\_AGAINST THE CONVENTION

Voters will indicate their choice by placing a cross mark (x) opposite one or the other of the above expressions.

(b) The proper officers in all counties shall immediately after the election make a return to the secretary of state of the number of votes cast in their respective counties "For the Convention" and the number of votes cast "Against the Convention" with respect to the question in subsection (a), and after comparison of the returns by the secretary of state and the attorney general and reporter, the governor shall, by proclamation, announce the results.

(c) If the people approve the question and thereby authorize the convention, then delegates shall be elected at the regular general election to be held on Tuesday, November 5, 2002, under the general election laws of the state in the several counties. There shall be one hundred thirty-two (132) delegates, with one delegate to be elected by the qualified voters of each state senate district from which members are elected to the senate of the Tennessee general assembly and one delegate to be elected by the qualified voters of each state representative district from which members are elected to the house of representatives of the Tennessee general assembly, as such districts exist at the time delegates are elected to the Constitutional Convention.

(d) Any person who is at least twenty-one (21) years of age, a citizen of the United States, and a citizen of Tennessee for three (3) years and a resident of the district for at least one year may become a candidate for delegate to the convention upon filing with the county election commission of the county of residence a nominating petition containing not less than twenty-five (25) names of legally qualified voters of the district. Each such person shall declare as a candidate from either a state senatorial district or a state representative district. In the case of a candidate from a state senatorial district comprising more than one county, only one qualifying petition need be filed by the candidate, and that in the candidate's home county, with a certified copy thereof filed with the election commission of each of the other counties in the state senatorial district. In the case of a candidate from a state representative district comprising more than one county, only one qualifying petition need be filed by the candidate, and that in the candidate's home county, with a certified copy thereof filed with the election commission of each of the other counties in the state representative district.

Notwithstanding any provision of law to the contrary, every person desiring to become a delegate to the convention shall qualify by filing a qualifying petition or petitions by 12:00 o'clock noon, prevailing time, on Thursday, August 15, 2002. The names of candidates for the delegates to the convention shall be placed on the official ballot alphabetically without reference to political affiliation. Each voter shall cast a ballot for one delegate from the voter's senatorial district and a ballot for one delegate from the voter's state representative district. The candidate from each state senatorial district who receives the greatest number of votes shall be the delegate from the senatorial district; and the candidate from each state representative district who receives the greatest number of votes shall be the delegate from the state representative district.

The returns from the various counties shall be certified to the secretary of state and canvassed by the secretary of state, the governor and the attorney general and reporter in the same manner and form as the returns are required to be certified from the election in which the people vote for and against the call of the convention, as provided in subsection (a), and the governor shall, by proclamation, announce the names of those elected as delegates to the convention. Delegates to the convention, elected and certified, shall receive a certificate of election signed by the governor and attested by the secretary of state under the great seal of the state.

(e) The delegates elected to the convention shall assemble in the chamber of the house of representatives at Nashville at 12:00 o'clock noon on Monday, November 18, 2002, and organize by electing one of their members as president, another as secretary, and by electing such other officers as they consider necessary. If a majority of the delegates are not present on that date, those present shall adjourn from day to day until a majority appears, when the convention shall be organized. The convention when organized may adopt its own rules of procedure and employ such clerks, stenographers, reporters, sergeants-at-arms, and other assistants as the convention considers necessary and fix the amount of their compensation.

The compensation of the delegates to the convention shall be a per diem allowance and mileage allowance in such amounts as may prevail, during the time the convention meets, for members of the general assembly, which shall be paid by the state in the same manner that members of the general assembly are paid, upon certification by the president and secretary of the convention. In case there shall be a vacancy in the membership of the convention, it shall be filled by election of the legislative body of the county of residence of the delegate whose seat becomes vacant.

(f) It is the duty of the secretary of state to make publication in at least one general circulation newspaper published in each county of the fact that a constitutional

convention election is to be held in the state on Thursday, August 1, 2002. Any county not having a general circulation newspaper shall be considered to have been notified by publication in the newspaper published in counties immediately adjacent thereto. The secretary of state shall also certify to the various election commissioners of the different counties the form for the ballot with reference to the constitutional convention election agreeable to the terms of this section and furnish the election commissioners with any other printed information pertaining to the election that is material or necessary. If the people vote in favor of the convention, then it is the duty of the secretary of state to issue a call for the election of delegates to the convention. The election shall be held in the various counties on Tuesday, November 5, 2002, and the secretary of state shall certify to the various county election commissioners the form of the ballot to be used in the election of delegates as provided subsection (d). All ballots used in the 2002 regular August election shall include the above question as to holding the limited constitutional convention, and the ballots used in the 2002 regular November election shall include the names of the candidates for delegates to such convention, if such convention is approved.

(g) The final action of the convention with respect to the alteration of Article II, Section 28 of the Constitution of the State of Tennessee, relative to taxation, shall be duly certified by the president and the secretary of the convention and the original certified copy shall be transmitted to the secretary of state.

(h) Any amendment to Article II, Section 28 of the Constitution of the State of Tennessee, relative to taxation, adopted by the convention shall be submitted to the voters of the state for ratification or rejection of each separate amendment at an election to be held in such manner and on such date after the final adjournment of the convention as may be fixed and determined by the convention. The official ballot to be used in any such election shall be arranged so that the voter can vote separately for the ratification

or rejection of each and every amendment. Any election so held shall be held under the general election laws of the state. When the election to ratify or reject any amendment to the constitution has been held, the various county election commissioners shall certify the result thereof in each county to the secretary of state, who, together with the governor and attorney general, shall canvass the returns and the governor shall issue a proclamation showing the result of the election on the ratification or rejection of the amendment. All amendments ratified and approved in the election held for that purpose shall be proclaimed by the governor as a part of the constitution of the state and such proclamation shall be filed in the office of the secretary of state.

(i) All expenses in connection with the holding of any of the elections authorized by this section shall be paid by the commissioner of finance and administration on warrant drawn upon the treasurer upon certification by the secretary of state to the correctness of each account. No compensation shall be paid by the state to the various county election commissioners for their services or for rental space or quarters in the various counties for places for holding any elections herein authorized.

(j) Notwithstanding any provision of law to the contrary:

(1) Every person acting as a lobbyist at the constitutional convention shall be subject to the provisions of Tennessee Code Annotated, Title 3, Chapter 6, as if the convention constitutes an annual session of the general assembly;

(2) Every person serving as a delegate to or an employee of the constitutional convention shall be subject to the provisions of, Tennessee Code Annotated, Title 2, Chapter 10, Part 1, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly; and

(3) Every person serving as a delegate to or an employee of the constitutional convention (as well as such person's immediate family), shall be

subject to the provisions of Tennessee Code Annotated, Section 3-6-108, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly

#### **IV. SEVERABILITY PROVISIONS AND EFFECTIVE DATES.**

**SECTION 32.** If any provision of this act or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable; provided, however, if the holding prohibits broadly-based implementation of the Tennessee flat tax levied by Section 28, then all provisions and applications of this act, except Section 31, are declared to be invalid and void.

#### **SECTION 33.**

(a) Section 1 through 4 of this act shall take effect upon becoming a law, the public welfare requiring it.

(b) Sections 5 through 27 of this act shall take effect January 1, 2003; provided, however, if the people approve the question set forth in Section 31 and thereby authorize the limited constitutional convention, then Sections 5 through 27 shall not take effect until January 1, 2004, and the various dates specified within the provisions of those sections shall be adjusted as necessary to appropriately reflect such one-year delay of implementation.

(c) Section 28, § 67-2-233(a), shall take effect upon becoming a law, the public welfare requiring it.

(d) Section 28 [excluding § 67-2-233(a)], shall take effect January 1, 2003; provided, however, if the people approve the question set forth in Section 31 and thereby authorize the limited constitutional convention, then Section 28 [excluding § 67-2-233(a)], shall not take effect

until January 1, 2004, and the various dates specified within the provisions of the section shall be adjusted as necessary to appropriately reflect such one-year delay of implementation.

(e) Section 29 shall take effect January 1, 2003; provided, however, if the people approve the question set forth in Section 31 and thereby authorize the limited constitutional convention, then Section 29 shall not take effect until January 1, 2004.

(f) Sections 30 through 32 shall take effect upon becoming a law, the public welfare requiring it.